

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION) Master File No. 01-12257-PBS
))
THIS DOCUMENT RELATES TO:) Judge Patti B. Saris
State of California, *et al.* v. Abbott Laboratories, *et al.*)
CASE NO: 1:03-cv-11226-PBS)
))

**MOTION BY THE STATE OF CALIFORNIA FOR COURT CLARIFICATION
REGARDING CALIFORNIA'S AND RELATOR'S INVOLVEMENT IN THE
TUTORIAL PROCESS**

The State of California (“California”), through its undersigned counsel, hereby moves the Court for an order providing clarification regarding California’s involvement in the tutorial process. The Relator, Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”), joins in this motion.

The Court has granted the Track 1 Defendants’ motion for the parties to present a tutorial on drug pricing and reimbursement issues. Counsel for the class plaintiffs, Messrs. Sobol and Berman, have advised that the scope of the upcoming tutorial, now scheduled for December 7, 2004, is said to be limited to information uniquely relating to the class certification issues. Defendant ABBOTT LABORATORIES, INC.’s Response (dated 10/8/04) to California’s 10/1/04 Status Report similarly took the position that the upcoming tutorial will be limited to the class certification issues, and also asserted that California’s tutorial may be premature at this time. Defendants WYETH, INC. and WYETH PHARMACEUTICALS, INC. joined in ABBOTT’s response.

California is not one of the plaintiffs involved in the class action lawsuit, and has no interest in the class certification issue. However, the Case Management Order No. 12 indicates that the tutorial will cover pharmaceutical pricing and reimbursement. Therefore, the issues contemplated by the tutorial will overlap the issues involved in the California and Ven-A-Care case, and may adversely affect the interests of California and Ven-A-Care.

California and Ven-A-Care contend it is important that information relevant to California's pending action also be presented to the Court. California and Ven-A-Care further submit that a tutorial on issues relating to the reporting and publishing of Average Wholesale Prices (AWPs), Wholesaler Acquisition Costs (WACs) and Direct Prices, as well as the use of such reports in the determination of Medicaid Reimbursement, would be helpful to the Court and would aid in focusing the issues in the California case.

For the reasons above stated, California and Ven-A-Care request to participate in the tutorial process, and are ready, willing, and able to prepare their own tutorial submission, in accordance with the relevant provisions of Case Management Order No. 12.

Therefore, California and Ven-A-Care respectfully request the Court's clarification as to whether the Court will permit California and Ven-A-Care to present their own joint tutorial at the scheduled tutorial hearing and to participate at the hearing. If California and Ven-A-Care are not allowed to participate in the currently scheduled tutorial, then California and Ven-A-Care respectfully request the Court's permission to present a tutorial in the California case at a later date.

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A Proposed Order is provided for the Court.

Respectfully submitted,

BILL LOCKYER
Attorney General for the State of California

Dated: November 1, 2004.

By: 
WILLIAM S. SCHNEIDER
CA State Bar No.: 78060
Deputy Attorney General
Bureau of Medi-Cal Fraud & Elder Abuse
Office of the Attorney General
California Department of Justice
1455 Frazee Road, Suite 315
San Diego, California 92108
Tel: (619) 688-6099
Fax: (619) 688-4200

Attorneys for the Plaintiff, State of California

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**[PROPOSED] ORDER REGARDING CLARIFICATION OF CALIFORNIA'S
AND VEN-A-CARE'S INVOLVEMENT IN THE TUTORIAL PROCESS**

The State of California (“California”), the Relator, Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”), and defendants are permitted to present their own tutorial and participate at the tutorial hearing currently scheduled for December 7, 2004, in accordance with the relevant provisions of Case Management Order No. 12.

OR IN THE ALTERNATIVE:

The State of California (“California”), the Relator, Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”), and defendants will be permitted to present their own tutorial separate from, and on a date subsequent to, the tutorial hearing currently scheduled for December 7, 2004. California and Ven-A-Care shall meet and confer with the defendants in their action at a later date to discuss the appropriate timing and procedures for the subsequent tutorial, and prepare a proposed Case Management Order similar to Case Management Order No. 12.

IT IS SO ORDERED this _____ day of November 2004.

HON. PATTI B. SARIS
UNITED STATES DISTRICT JUDGE